

STATE OF CALIFORNIA
FISH AND GAME COMMISSION
FINAL STATEMENT OF REASONS FOR REGULATORY ACTION

Amend Sections 125 & 125.1
Title 14, California Code of Regulations
Re: Commercial Rock Crab Permits

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| I. | Date of Initial Statement of Reasons: | March 16, 2010 |
| III. | Date of Final Statement of Reasons: | August 17, 2010 |
| IV. | Dates and Locations of Scheduled Hearings: | |
| | (a) Notice Hearing: | Date: April 8, 2010
Location: Monterey, CA |
| | (b) Discussion and Adoption Hearing: | Date: June 24, 2010
Location: Folsom, CA |
| V. | Update: | |

The Initial Statement of Reasons provided regulatory sub-options for qualifications for transferable permits as well as a range limiting the number of permit transfers per year and a range of possible transfer fees.

Option 1: Allow all existing southern rock crab trap permits that have not been suspended or revoked to become transferable

Option 2: Issue transferable permits to holders of existing southern rock crab trap permits that have not been suspended or revoked who have met the qualifications of a landing requirement.

The Commission selected Option 1 on June 24, 2010, to allow all existing southern rock crab trap permits that have not been suspended or revoked to become transferable. The Commission also adopted a limit of 5 transfers per permit year and a transfer fee of \$1,000.00. The adopted regulations also require rock crabs to be identified to species level on landing receipts, landing of rock crabs prior to being used as bait in finfish traps, and allow a rock crab trap permit holder to remove the traps of another permit holder in the event of illness or injury to the traps' owner.

- VI. Summary of Primary Considerations Raised in Support of or Opposition to the Proposed Actions and Reasons for Rejecting those considerations:
1. Comment by Philip Beguhl, commercial fisherman, letter received June 14, 2010. Supports:
- o Option 2 with a minimum landing of 2,500 lbs during any calendar year from 2005 – 2008.

- Limit of 5 transfers per license year (except for estate of deceased permit holder),
- Transfer fee of \$1000
- Segregation of rock crabs to species level on landing receipts

Commission Response: Landings of rock crab of 500 pounds south of Pt. Lopez between 1998 and 2003 was required to be eligible for initial issuance of southern rock crab trap permits in 2005. One hundred and eighty three (183) individuals initially qualified for permits, of which 143 purchased the permit, a 32% reduction from the original qualifying amount. Between 2005 and 2009, there has been another 12.5% reduction in the number of permits to its current number of 125. The Commission believes that the 12.5% decrease in number of permits since original issuance coupled with the stable recent catch history indicates that the current number of permits is appropriate and therefore all existing permits should become transferable. The Commission approved all other supported components of the proposed regulations.

2. Comment by Josh Fisher, commercial fisherman, letter received June 8, 2010. Supports option 1, 10 transfers annually and a \$500.00 transfer fee

Commission Response: The limit on the number of permits transferred each permit year was put in place to slow the rate of new entrants into the fishery. Five permits was the recommendation developed by the ad-hoc committee as it balanced the desire to allow new participants into the fishery with the concerns over a possible increase in effort beyond sustainable levels due to the transfer of a large number of latent permits to more active participants. The Commission adopted a permit transfer fee of \$1,000.00 to cover the estimated costs to the Department of Fish and Game of \$1,018.65.

3. Comment by Jeff French, commercial fisherman, email received June 7, 2010. Supports option 1, opposes option 2.

Commission Response: Option 1 selected by Commission

4. Comment by John French, commercial fisherman, letter received June 3, 2010. Supports option 1, opposes option 2.

Commission Response: Option 1 selected by Commission

5. Comment by Rick Gutierrez, commercial fisherman, oral testimony given on June 24, 2010: Supports option 2.

Commission Response: See response to Comment 1 above regarding support of option 2.

6. Comment by Greg Helms, representing Megan Wylie of San Diego Coast Keeper, oral testimony given on June 24, 2010: Supports no project

alternative for transferable permits or option 2. Supports limit of 5 transfers per year, transfer fee of \$2,000.00, and species specific data collection.

Commission Response: See response to Comment 1 above regarding support of option 2. See response to Comment 2 regarding permit fees. The no project alternative to leave the permit moratorium in place continues to prohibit new members from entering the fishery. Without a mechanism for new entrants to enter the fishery, the number of permit holders will continue to decrease until, at some point in the future, a fishery ceases to exist. The limit of 5 permit transfers per year balances concerns regarding increased effort in the fishery with the need to allow new participants to enter the fishery.

7. Comment by Chris Hoeflinger, commercial fisherman, email received June 19, 2010. Supports option 1, opposed option 2.

Commission Response: Option 1 selected by Commission

8. Comment by Keith Langman, commercial fisherman, email received May, 6, 2010. Supports option 1, opposed option 2.

Commission Response: Option 1 selected by Commission

9. Comment by Chris Miller, commercial fisherman, email received June 13, 2010. Supports option 1. For various reasons opposed option 2, but stipulated he supports a plan to properly fund the Department of Fish and Game that would include a lottery for permits to help generate funds for the Department.

Commission Response: Option 1 selected by Commission. The proposal regarding funding through a lottery is not being considered under this regulatory change.

10. Comment by Guy Robinson, commercial fisherman from Santa Barbara area, oral testimony given on June 24, 2010: Supports options 2 as well as the no project alternative to not make any permits transferable. Supports limit of 5 transfers per year.

Commission Response: Landings of rock crab of 500 pounds south of Pt. Lopez between 1998 and 2003 was required to be eligible for initial issuance of southern rock crab trap permits in 2005. One hundred and eighty three (183) individuals initially qualified for permits, of which 143 purchased the permit, a 32% reduction from the original qualifying amount. Between 2005 and 2009, there has been another 12.5% reduction in the number of permits to its current number of 125. The Commission believes that the 12.5% decrease in number of permits since original issuance coupled with the stable recent catch history indicates that the current number of permits is appropriate and therefore all existing

permits should become transferable. The Commission approved all other supported components of the proposed regulations.

The no project alternative to leave the permit moratorium in place continues to prohibit new members from entering the fishery. Without a mechanism for new entrants to enter the fishery, the number of permit holders will continue to decrease until, at some point in the future, a fishery ceases to exist. The limit of 5 permit transfers per year balances concerns regarding increased effort in the fishery with the need to allow new participants to enter the fishery.

11. Comments received from John Law, June, 11, 2010, Lauro Saraspe, June 14, 2010, and Andres Saraspe, June 14, 2010. Three duplicate letters/emails received supporting option 2, with the recommendation to provide transferable permits holders of Nearshore Trap Permits who landed nearshore fish with traps during the qualification period. Also expressed concern over incidental take of Kellet's whelk under a southern rock crab trap permit.

Commission Response: See response to Comment 1 regarding support of option 2. The comment regarding Kellet's whelk was discussed in detail during the development of the regulations as well as at the adoption hearing. Consideration of regulations regarding Kellet's whelk would require the Commission to designate Kellet's whelk as an emerging fishery pursuant to California Fish and Game Code Section 7090. This comment is worthy of additional review and may be considered under a future rulemaking

VII. Location and Index of Rulemaking File:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street
Sacramento, California 95814

VIII. Location of Department files:

A rulemaking file with attached file index is maintained at:
California Fish and Game Commission
1416 Ninth Street, Room 1320
Sacramento, California 95814

IX. Description of Reasonable Alternatives to Regulatory Action:

(a) Alternatives to Regulation Change:

A restricted access program with transferable permits was previously considered by the Department. The Department did not want to develop a

restricted access fishery without statewide industry participation and full analysis of a capacity goal and existing data. Due to the paucity of biological data, lack of log books, and species specific landing data, a full analysis of a capacity goal is not possible at this time.

Another alternative to gain access into the fishery is to convert the fishery to open access. This is not desirable as it would likely result in a significant increase in effort, and possibly push the fishery to unsustainable levels. It is also unfair to the fishermen who did not originally qualify for a permit and have sold or given away their trap gear. It also creates ill will and a lack of trust between the department and the industry. A California fishery that was restricted has never been converted back to open access before. Restriction adds value to a permit, and has been shown to increase fishermen's sense of ownership and respect for the resource.

(b) No Change Alternative:

If the proposed regulation is not adopted for the southern rock crab trap fishery, there will continue to be a lack of a way for new members to enter the fishery as participants retire or shift focus to other fisheries. In addition, the lack of species specific landing data can mask the decline of individual species and can lead to serial depletion. Declines in population can be further masked by the use of rack crab as bait, which is anticipated to be a large volume, although no empirical data are available to ascertain these levels.

Maintaining the status quo will keep the rock crab trap fishery in an extremely data poor state and will lead to the continued decline in the number of participants in the southern rock crab trap fishery.

(c) Consideration of Alternatives:

In view of information currently possessed, no reasonable alternative considered would be more effective in carrying out the purposes for which the regulation is proposed or would be as effective as and less burdensome to the affected private persons than the proposed regulation.

X. Impact of Regulatory Action:

The potential for significant statewide adverse economic impacts that might result from the proposed regulatory action has been assessed, and the following determinations relative to the required statutory categories have been made:

(a) Significant Statewide Adverse Economic Impact Directly Affecting Businesses, Including the Ability of California Businesses to Compete with Businesses in Other States:

The proposed action will not have a significant statewide adverse

economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

The proposed regulations to allow transferable permits would allow new members to enter the fishery. This is needed to maintain a viable southern rock crab trap fishery in California, resulting in a positive economic impact for participants and businesses.

- (b) Impact on the Creation or Elimination of Jobs Within the State, the Creation of New Businesses or the Elimination of Existing Businesses, or the Expansion of Businesses in California:

None

- (c) Cost Impacts on a Representative Private Person or Business:

The proposed regulation to allow transferable permits would allow new members to enter the fishery. This is needed to maintain a viable southern rock crab trap fishery in California, resulting in a positive economic impact for participants and businesses. Increased competition for the resource is possible but not likely since market demand primarily controls the amount of crab harvested.

The proposed regulations for species specific landing data and landing of rock crab used as bait have the potential to moderately reduce the efficiency of rock crab and nearshore trap fishermen in the short-term. In addition, Rock crab that are to be used as bait will be required to be landed which will incur a landing tax of \$0.0019 per pound pursuant to FGC § 8041 and 8051. It is anticipated, however, that the participants in these fisheries will easily adapt to the proposed regulations with no significant economic impact.

- (d) Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State:

None

- (e) Nondiscretionary Costs/Savings to Local Agencies:

None

- (f) Programs mandated on Local Agencies or School Districts:

None

- (g) Costs Imposed on Any Local Agency or School District that is Required to be Reimbursed Under Part 7 (commencing with Section 17500) of Division 4, Government Code:

None

(h) Effect on Housing Costs:

None

AMENDED Updated Informative Digest/Policy Statement Overview

Under current regulations (Section 125, Title 14, CCR), only persons who held a valid southern rock crab trap permit during the immediately preceding permit year are eligible to obtain a permit for the following permit year. This has resulted in a permit moratorium that prohibits any new entrants into the fishery. The proposed regulation would allow new individuals to enter the fishery by obtaining a transferable permit from an existing permit holder. The proposed regulation would greatly increase the data available on the fishery by requiring rock crab landed to be separated out by species and for nearshore trap fishermen to land rock crab and record those landings on a landing receipt prior to using them as bait. Finally, the proposed regulations would add regulatory language specifically allowing a rock crab trap permit holder to remove the traps of another permit holder in the event of illness or injury to the traps' owner.

Option 1: The proposed regulations would allow all existing southern rock crab trap permits that have not been suspended or revoked to become transferable.

Option 2: The proposed regulations would issue transferable permits to existing southern rock crab trap permit holders that have not been suspended or revoked that have landed a minimum of [1 – 5,000] pounds of rock crab during any calendar year from 2005 through 2008 using trap gear, inclusive, as documented by Department landing receipts submitted in an individual's name and commercial fishing license identification number with trap gear identified.

To address the concerns surrounding the impact of providing permits to more active participants, the proposed regulations would limit the number of transfers processed by the department each license year (April 1 – March 31) to [0-10] individuals. This would retard the rate of new entrants into the fishery and permit the early detection of an increase in catch levels or a change in the distribution of effort among permittees. The annual limit on permit transfers would not apply in the event of death of the permit holder.

It is proposed that a transfer fee of \$1,000 would be levied for the transfer of a southern rock crab trap permit.

Applications to transfer permits are proposed to be in the form of a notarized letter from the existing permit holder, or the estate of the permit holder in the event that the permit holder is deceased, identifying the transferee and shall include the original, **or a copy of**, the transferable southern rock crab trap permit, a copy of the transferee's commercial fishing license and the nonrefundable permit transfer fee. Applications are proposed to be submitted to the department's License and Revenue Branch, 1740 North Market Boulevard, Sacramento, CA 95834. It is proposed that applications will be processed in the order received. If on any given day the number of applications received is greater than the available number of transfers, the department shall conduct a manual drawing to determine which application(s) shall be processed. Applications that are not processed will be returned and may be resubmitted on or after the first day of the following permit year for consideration.

In the event of death of the southern rock crab trap permit holder, it is proposed that the

estate of the permit holder may renew the permit if needed to keep it valid. It is also proposed that the estate of a deceased transferable permit holder may transfer the permit not later than 1 year from the date of death listed on the death certificate.

The proposed regulations would require rock crabs to be identified at the species level: red, brown or yellow on all landing receipts. The use of “unspecified rock crab” would be prohibited.

Under current regulations (Section 125.1(d), Title 14, CCR), rock crabs may be used as bait in finfish traps. However, there is no mechanism to track the amount of rock crab used as bait. The proposed regulation would require that all rock crabs are brought ashore, landed and recorded on a landing receipt before they can be used as bait in finfish traps. The total pounds of rock crab to be used as bait from each landing will be required to be recorded in the “Note Pad” field on the landing receipt. Rock crabs used as bait in finfish traps will be required to be accompanied by a landing receipt demonstrating that the crab to be used as bait has been landed prior to being used as bait. The fisherman would also be required to keep copies of landing receipts documenting the catch of rock crabs that are used as bait on the fishing vessel for a minimum of 30 days from the date of landing as listed on the landing receipt.

Minor edits are also provided to better align the reference of permit fees and applications under a centralized Title 14 section being proposed by the Department’s License and Revenue Branch.

At the June 24, 2010 Commission meeting, the Commission voted to adopt the proposed regulations for Option 1, with ranges and options noted as follows:

- **Make all existing southern rock crab trap permits that have not been suspended or revoked transferable**
 - Maximum of 5 permit transfers in any given permit year**
 - Transfer fee of \$1,000.00 (The annual fee is specified in Section 705, Title 14, CCR, under a separate rulemaking, and an additional 15 day public notice was mailed on July 20, 2010 outlining the Rock Crab Permit Transfer Fee Cost Worksheet)**
- **Require all rock crab to be identified at the species level on landing receipts**
- **Allow a rock crab permittee to pull rock crab traps belonging to another permit holder in the event of illness or injury**
- **Require all rock crabs to be weighed and landed prior to being used as bait in finfish traps**

In addition, the Commission adopted minor editorial changes to improve the clarity and consistency of the regulations.

- **Noticed text provided for permits belonging to the estate of a decedent a two year time period for transfer of the permit. This allows for probate and additional administrative details regarding the estate.**